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Hartman and Tyner, Inc., d/b/a Mardi Gras Casino and Hollywood Concessions, Inc. and UNITE HERE! Local 355, affiliated with UNITE HERE! Cases 12-CA-072234, 12-CA-072238, 12-CA-072245, 12-CA-072246, 12-CA-072248, 12-CA-072251, 12-CA-072254, 12-CA-072257, and 12-CA-072263

September 30, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

On April 25, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 100 (2013). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 100, which is incorporated herein by reference. The

¹ In finding that the Respondent's interrogation of Nnaemeka shows that it knew, or at least suspected, that she supported the Union, we rely on *Southern Pride Catfish*, 331 NLRB 618, 620 (2000), and *McLean Roofing*, 276 NLRB 830, 833 (1985). We do not rely on *Evenflow Transportation*, 358 NLRB No. 82 (2012), cited in the vacated decision.

judge's recommended Order, as further modified herein, is set forth in full below.²

ORDER

The Respondent, Hartman and Tyner, Inc., d/b/a Mardi Gras Casino and Hollywood Concessions, Inc., Hallandale Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees regarding their union sympathies and the union activities of other employees.

(b) Threatening employees with unspecified reprisals because of their union activities.

(c) Threatening employees with arrest for engaging in protected concerted union activities.

(d) Informing employees that they have been discharged because they engaged in protected concerted union activities.

(e) Suspending, discharging, or otherwise discriminating against employees because of their union activities in support of UNITE HERE! Local 355, affiliated with UNITE HERE!, or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the amended remedy section of this decision.

(c) Compensate Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the So-

² We shall also modify the judge's recommended Order and substitute a new notice in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall further modify the notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

cial Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions and discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Hallandale Beach, Florida, facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 12, in English, Haitian Creole, and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 30, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. September 30, 2014

Mark Gaston Pearce,	Chairman
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Kent Y. Hirozawa,	Member
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Nancy Schiffer,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union sympathies or the union activities of your fellow employees.

WE WILL NOT threaten you with unspecified reprisals because of your union activities.

WE WILL NOT threaten you with arrest for engaging in protected concerted union activities.

WE WILL NOT inform you that you have been discharged because you engaged in protected concerted union activities.

WE WILL NOT suspend, discharge, or otherwise discriminate against you for supporting UNITE HERE! Local 355, affiliated with UNITE HERE! or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein whole for any loss of earnings and other benefits resulting from their suspensions and discharges, less any interim earnings, plus interest.

WE WILL compensate Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, Theresa Daniels-Muse, Tashana McKenzie, Amanda Hill, and Steven Wetstein for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspensions and discharges of Theresa Daniels-Muse,

Tashana McKenzie, and Amanda Hill and the unlawful discharges of Sochie Nnaemeka, James Walsh, Dianese Jean, Alicia Bradley, and Steven Wetstein, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

HARTMAN AND TYNER, INC. D/B/A MARDI GRAS CASINO AND HOLLYWOOD CONCESSIONS, INC.

The Board's decision can be found at www.nlr.gov/case/12-CA-072234 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

